



NATIONAL ASSOCIATION OF REALTORS®

The Voice for Real Estate®

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LEGAL AFFAIRS

October 17, 2005

Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

Attn: Jeff S. Jordan, Supervisory Attorney
Complaints Examination & Legal Administration

RE: MUR 5681

Dear Mr. Jordan:

This letter is in response to yours dated September 29, 2005 and received on October 4, 2005, addressed to Mr. Al Mansell, President of the National Association of Realtors® (NAR). In my telephone call with Kim Collins of your office on October 5, 2005, she confirmed that notwithstanding the fact that your letter is addressed to NAR, the respondent to which it is directed is the Realtors® Political Action Committee (RPAC), the separate segregated fund of NAR.¹ I enclose a Statement of Designation of Counsel in which C. Michael Brodie, Treasurer of RPAC, designates me as counsel to RPAC in this matter.

The complaint addresses certain conduct by the High Point Regional Association of Realtors® (HPRAR), a local association of Realtors® affiliated with NAR. In particular, the complaint notes that HPRAR solicits contributions to RPAC from its members, and acknowledges that members are not required to make contributions to RPAC and that such contributions are "supposedly" voluntary.² The complaint further asserts that HPRAR publishes the names of members who have elected not to make a contribution to RPAC in a monthly newsletter, and alleges that publication of such names violates the Federal Election Campaign Act.³

¹ RPAC's FEC Registration number is C00030718.

² HPRAR may solicit its members to make contributions to RPAC in accordance with §114.8(g) of the FEC Regulations. More specifically, FEC Advisory Opinion 1995-17 expressly confirms that NAR and its affiliated state and local Realtor® associations may solicit contributions to RPAC from members of such state and local "Member Boards" (Realtor® associations.)

³ It is RPAC's understanding that the HPRAR newsletter in which this information was published is distributed only to members of HPRAR, and therefore even if this information could itself be construed as a solicitation of contributions to RPAC it is not an unlawful solicitation of persons outside the "solicitable class."



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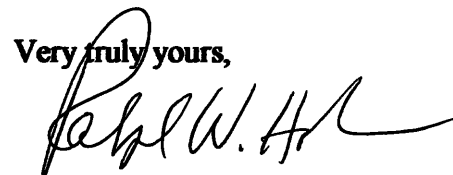
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Simply put, it is not a violation of the Act for HPRAR and/or RPAC to publish in a newsletter distributed only to members the names of those members who had not contributed to RPAC. To be sure, certain provisions of the Act⁴ and Regulations⁵ prohibit securing or soliciting contributions to RPAC by actual or threatened "force, job discrimination or financial reprisals" or other coercive methods. With a single exception inapplicable here, however, the Act does not prohibit identification of solicitable individuals who have declined to contribute and publication of the names of such persons to other solicitable individuals. Moreover, the complaint does not allege, and there was no, improper coercion applied to the individuals listed in the publication as having not made a contribution to RPAC, and thus neither HPRAR nor RPAC have violated the Act in that respect.

In fact, very existence of the single exception referenced above confirms that HPRAR's publication of the names of non-contributors does not violate the Act. That exception is the requirement of §114.6 of the Regulations that solicitation of employees other than executive and administrative personnel be made not more often than twice yearly, in writing directed to the residences of such persons, and that such persons be offered the opportunity to make their contributions anonymously pursuant to the "custodial arrangement" described in that section. That right to anonymity applies only to twice-yearly solicitations of employees other than executive and administrative personnel. It does not apply to solicitation of members of a membership organization pursuant to §114.7, to which there are no limits on the number or methods of solicitation of such members. See §114.7(e),(f). Moreover, the inapplicability of the opportunity to remain anonymous in electing to contribute or not to solicitable persons other than a limited class infers that others who may be solicited and may or may not contribute have no right to or expectation of anonymity, and correspondingly, that publication of the identity of non-contributing solicitable persons is not a violation of the Act or Regulations. If the "anti-coercion" requirements of the Act and Regulations are construed to prohibit publication of the names of non-contributors other than those to which §114.6 expressly applies, the custodial arrangement requirements of §114.6 become wholly unnecessary and rendered irrelevant, a result which cannot be intended and should not be embraced.

Accordingly, I respectfully request on behalf of the REALTORS® Political Action Committee that the Commission and Commission staff take no action against RPAC in response to this complaint, and that it be dismissed without further action. I would be happy to discuss with you the information set forth above, or to provide any other information or material which will assist you to conclude that it should be dismissed. Please feel free to contact me at your convenience at 312/329-8375.

Very truly yours,



Ralph W. Holmen
Associate General Counsel

⁴ 2 USC §441b(b)(3)(A)

⁵ 11 C.F.R. §114.5(a)

RWH/cp

Enclosures

cc: **Laurene K. Janik, General Counsel**
Walt Witek, Vice President, Government Affairs
Scott Reiter, RPAC Program Representative, Government Affairs

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STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Witness
FAX (202) 219-3923

MUR: 5681

COUNSEL: Ralph W. Holmen

FIRM: National Association of REALTORS

ADDRESS: 430 N. Michigan Ave., Chicago, IL 60611

TELEPHONE - OFFICE: (312) 329-8375

FAX: (312) 329-8256

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/17/2005 C. Michael Brodie Treasurer
Date Signature Title

RESPONDENT/WITNESS NAME (PRINT): C. Michael Brodie

MAILING ADDRESS: 430 N. Michigan Ave.
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Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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